

CONTRACT STANDING ORDERS

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CONTRACT STANDING ORDERS

1. INTRODUCTION

- 1.1 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972 and the purpose is to provide a framework within which commissioning and purchasing decisions are undertaken to enable the Council to:
- deliver its priorities
 - use its resources efficiently
 - commission quality goods, services and works
 - operate in a fair, open and transparent manner
 - safeguard its reputation from the implication of dishonesty or corruption.
- 1.2 These Contract Standing Orders provide the minimum standards and requirements that shall be met on all occasions when the Council enters into an agreement for the supply of goods, services or the execution of works. Further guidance that shall also be applied is provided in the Council's Commissioning and Procurement Manual.
- 1.3 These Contract Standing Orders apply to all contracts, leases, concessions and agreements entered into by or on behalf of the Council; except where:
- The goods, services or works are provided by a wholly owned subsidiary of the Council or where the Council controls the subsidiary in a similar way to which control is exercised over their own departments, more than 80% of the subsidiary's activities are undertaken for the Council and there is no direct private capital participation in the subsidiary.
 - The Council collaborates with other Public Authorities to deliver a public service with a view to achieving objectives that they have in common, and the collaboration is implemented in a manner governed solely by considerations relating to the public interest.
 - The Council has established a Mutual Organisation delivering a service contract in relation to education, healthcare and housing, health and social work services, or library and other cultural services. A contract may be awarded for no more than 3 years.
 - Circumstances where purchases are made or services rendered as a consequence of a contract made by another Local Authority, Government Department, Government Body or Agent, the benefits of which the Council obtains as a result of participation in a consortium.

- Goods are purchased by public auction.
 - The lending or borrowing of money.
 - The appointment of any Officer directly employed by the Council.
 - The sale or purchase of any land or buildings.
 - The provision of services by Legal Counsel.
 - Agreements setting out the conditions which the Council will provide funding to particular voluntary sector bodies.
 - The goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations or Government order and no satisfactory alternative is available.
- 1.4 The Rules do not apply to contracts of employment, contracts for the acquisition or disposal of interests in land, and contracts for unique artistic performances or unique art work. Exemption is also permissible where work of an emergency nature is required or where only one supplier could carry out the work.
- 1.5 Where the Council acts in partnership with another organisation then, if agreed with The Director of Corporate Resources, the contractual and tendering procedures of the partner organisation may be used in substitution, in whole or in part, for the Rules. Where the Council is the lead authority these Rules are to be followed.
- 1.6 Directors are responsible for ensuring that all employees in their departments receive any required training and guidance and fully comply with these Rules.

2 COMPLIANCE WITH CONTRACT PROCEDURE RULES

- 2.1 The provisions contained in the Rules are subject to the statutory requirements of both the European Union (EU) and the United Kingdom (UK) Government. The letting and content of contracts shall conform to all statutory requirements and be subject to any over-riding directives of the EU relating to contracts and procurement. This cannot be waived, since a failure to comply with European legislation may result in a legal challenge with consequent reputational and financial risk. In estimating relevant contract values, officers shall have regard to the principle of aggregation. Repeat purchases of the same set of goods over a sustained period may exceed the EU or the Council's thresholds.
- 2.2 In estimating relevant contract values, officers may be unsure as to which banding category the procurement will fall. When a project may be close to two bandings, the higher banding of the two shall be chosen.

3. PROBITY

3.1 In every instance there shall be a record of the process which will include, subject to the limits set out in Table 1, the following:

- (a) The officer(s) undertaking the procurement process and taking the decisions and appropriate delegated decision reports and notices
- (b) The rationale for the procurement route taken (including open or restricted procedure if above EU thresholds). See Procurement Manual for thresholds.
- (c) A copy of the specification
- (d) Copies of all tenders & completed supplier questionnaires
- (e) A copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender
- (f) A copy of the award letter (including the “standstill” and other notification letters)
- (g) A copy of the final contract
- (h) A copy of the contract review and management process including the officer responsible for on-going contract management

3.2 Segregation of duties

The activities relating to the contracting and procurement processes are segregated in particular between the following phases:

- requisition
- authorisation
- purchase Order
- receipt
- payment

4. DELEGATED AUTHORITY

4.1 All commissioning and procurement activity by the Council shall be undertaken in compliance with the Council’s Procurement Scheme of Delegation which is provided in Table 1.

4.2 Delegation of Authority to Approved Officers

Corporate Managers have responsibility to delegate authority to Approved Officers and shall ensure that they have the appropriate levels of capability and understanding to undertake the role.

4.3 **Recording of Delegations**

Effective records of delegations shall be maintained in the Council's Authorised Signatory List which the Council's Section 151 Officer or his/her nominee has responsibility for the compilation of. Corporate Managers (or the role which succeeds this role) have responsibility to ensure that details of Approved Officers are maintained in the Authorised Signatory List.

4.4 **Variation from the Procurement Scheme of Delegation**

Where requirements for high value contracts and purchase orders occur on a regular basis the Section 151 Officer may approve a variation from the Standard Procurement Scheme of Delegation for requirements up to £250k. Any such variations shall be recorded in the Council's Authorised Signatory List.

4.5 **Key Decisions**

Where the spend is £150k or more please refer to the constitution Part 1, 12.7.1. you will be required to complete a proforma (link below) to add the item on the forthcoming decisions list advice should be sought from

committee@babberghmidsuffolk.gov.uk

<https://suffolknet.sharepoint.com/sites/connect/democraticservices/SitePages/BMSDC%20Corporate%20WorkPlan%20-%20Proforma.aspx>

Key decisions are required to be on the Forthcoming Decisions List for a minimum of 28 clear days.

Table 1 – Standard Procurement Scheme of Delegation

£ Value excl. VAT	Approve the Selection of Suppliers to Invite to Tender	Approve the award of business	Signing of contracts	Approval of purchase or works orders, payment vouchers or invoices	Approval of contract extensions	Approval of exemption from undertaking competitive sourcing
Up to £25k	Not Applicable	Approved Officer	Approved Officer	Approved Officer	Approved Officer	Corporate Manager
£150k (Note 1)	Not Applicable	Corporate Manager	Corporate Manager	Corporate Manager	Corporate Manager	Corporate Manager
£150k to £250k (Note 1)	Corporate Manager	Director	Director	Director	Director	Director
Over £250k (Note 1)	Corporate Manager	Director	Council's Monitoring Officer	Director	Director	Director

Notes

(1) Key Decision – see section 4.5 above

5 LIQUIDATED DAMAGES

- 5.1 For any contract a provision for liquidated damages should be considered. However where it is estimated to exceed £100,000 in value or and is for the execution of works, or for the supply of goods or materials by a particular date or series of dates, provision shall be made for liquidated damages. The amount to be specified in each such contract shall be determined by the relevant Director in consultation with the Director of Law & Governance/Monitoring Officer and the Director of Corporate Resources.

6. PERSONAL INTERESTS

- 6.1 Employees of the Council and Councillors shall give notice in writing to the Council of any pecuniary interest, direct or indirect, which he/she has in a contract entered into (or to be entered into) by the Council.
- 6.2 Such notification shall be given to the Council's Monitoring Officer.
- 6.3 Officers employed by the council must comply with code of conduct for employees relating to conflicts of interest.

7 MANAGEMENT OF RECORDS

- 7.1 Proper records of all communications, reports, minutes, meetings, quotes, tenders, contract and other relevant documents shall be retained securely so as to protect the integrity of the process and managed in accordance with the Council's policy on The Management and Retention of Records.
- 7.2 A record of all Contracts shall be entered into the Council's Contract Register.

8 PRINCIPLES

- 8.1 The following principles shall be applied to all the Council's commissioning and procurement.

8.2 Fairness and Transparency

All of the Council's commissioning and procurement activities shall be undertaken in an open and fair manner which provides the same information to all suppliers and an equal opportunity to all potential suppliers. The Council shall ensure that comparable situations are not treated differently and that different situations are not treated similarly.

8.3 The Principle of Proportionality

The Council's commissioning and procurement shall be undertaken with regard to the principle of proportionately. Requirements placed upon suppliers shall be appropriate

for attaining the objective pursued and shall not go beyond what is required to achieve the objectives of the procurement.

8.4 **Value for Money**

The selection of offers for goods, services or the execution of works from suppliers shall be based upon achieving value for money for the Council.

8.5 **Sustainability**

The selection of offers for goods, services or the execution of works from suppliers shall ensure that sustainable and ethical sources of supply with minimal impact upon the environment are used.

8.6 **Economic and Social Development**

Subject to the test of fairness and equality for potential suppliers the requirement to support specific regional economic and social development opportunities may be included.

9 **SOURCING PROCESSES**

9.1 The sourcing process that shall be used will depend upon the type and estimated value of the requirement (excluding VAT), refer to Table 2.

9.2 Requirements shall not be broken down into smaller portions (lots) for the purpose of avoiding the application of the procurement thresholds.

9.3 **Market Research and Pre-Procurement Engagement**

Access to accurate and relevant commercial intelligence and knowledge of the marketplace is necessary in deciding which procurement option is best. Relevant markets need to be researched and understood, however, care must be taken to ensure this does not distort competition or prejudice any bidder or potential bidder.

There are instances where it is beneficial to undertake pre-procurement market engagement. This may be to better understand the capacity of the market or to allow potential bidders to position themselves appropriately in order to tender effectively. In any case care must be taken and pre-procurement activity should only be undertaken following guidance from the Procurement team.

Table 2 – Sourcing Processes

Value of Expenditure	Sourcing Process
Up to £1k – All Categories	Verbal or email confirmation from supplier, pricing obtained from suppliers' catalogue.
£1k up to £25k – All Categories	A written quote from the supplier shall be obtained.
£25k up to £150k – All Categories	At least three quotes shall be invited using the Formal Quotation Process.
Over £150k – All Categories (Key Decision)	<p>A Tender shall be undertaken and advertised nationally and also in the EU where the value threshold for the UK Public Contract Regulations is passed for the relevant category:</p> <ul style="list-style-type: none"> • Goods and Services • Light Touch Services (see Note 1) • Works <p>Definitions of the categories and the current UK Public Contract Regulations Value Thresholds are available in the Commissioning and Procurement Manual.</p>

Note (1) Light Touch Services are health, social and related services, administrative social, educational and cultural services, compulsory social services, benefit services, community social and personal services, religious services, catering services for private households, prison services, postal services, investigation and security services.

10. EXEMPTIONS TO UNDERTAKING A COMPETITIVE SOURCING PROCESS

10.1 Exemptions to the requirement to undertake a competitive sourcing process shall be approved in accordance with the Council's Procurement Scheme of Delegation and can only be undertaken in the circumstances listed in Table 3.

10.2 All exemptions must follow the agreed exemption process and must be approved by Procurement Board, before any expenditure is undertaken.

Table 3- Exemptions to Undertaking a Competitive Sourcing Process

Type of Exemption	Criteria	£ Value for which this Exemption can be Applied
Sole Provider	Where for technical or artistic reasons connected with the protection of exclusive rights only a single supplier can meet the requirements.	Unlimited
Urgency A	Emergency action is required which acting diligently the Council could not have foreseen and if not taken would provide an unacceptable impact upon on the delivery of the Council's services.	Up to the value of the UK Public Contract Regulations value thresholds.
Urgency B	In cases of extreme urgency, where the health and safety of the public is at stake and the likelihood of harm during the period of delay is considerable, for reasons unforeseeable by and not attributable to the Council.	Unlimited
<i>Urgency A & B cannot be relied upon where a lack of forward planning has precluded a compliant procurement process</i>		
Additional Requirements	Where the Council requires a contractor to provide additional goods or carry out additional works or services beyond 50% of the original contract value (including any extension included in the original terms of the contract); which the Council acting diligently could not have foreseen and undertaking a further competitive sourcing process is unlikely to deliver value for money and will impede upon the delivery of the Council's services. The extension cannot include a variation in the scope of the contract.	The contract can be extended by its original value once again. However, the total value of the contract must not exceed the UK Public Contract Regulations value threshold for the relevant category.
Best Value	Where there is sufficient evidence that only one supplier is able to provide the goods or undertake the services or works within the required timescale and undertaking a competitive sourcing process would be unlikely to deliver value for money and will impede upon the delivery of the Council's services.	£150k

Notes

(1) The UK Public Contract Regulations value thresholds are available from the Commissioning and Procurement Manual.

The Councils' Contract Standing Orders do not allow the extension of any Supply Arrangement which has been awarded without competition. As such in these circumstances a further exemption would need to be approved.

11. EXTENSION OF CONTRACTS

- 11.1 The term of existing contracts shall only be extended if satisfactory performance has been provided from the contracted supplier and there is adequate budgetary provision.
- 11.2 Contracts shall only be extended where competition was used to select the Supplier.
- 11.3 Contracts shall only be extended for any period that was provided for in the original terms of the contract unless clause 8.4 applies.
- 11.4 Where the Council requires a contractor to provide additional goods or carry out additional works or services due to circumstances which acting diligently the Council could not have foreseen an extension of up to 50% of the original value of the contract (which includes any extension periods provided for in the terms of the original contract) can be undertaken.
- 11.5 Contracts shall not be varied with regard to the scope and the type of goods, services or works that they deliver unless, the variation has already been provided for in the original contract terms or the changes are not substantial and do not alter the nature of the Contract.

12. PURCHASE AND WORKS ORDERS

- 12.1 With the exception of the requirements included on the Council's Purchase Order Exemption List an official Purchase or Works Order must be used to undertake all financial commitments on behalf of the Council.

13. CONTRACT MANAGEMENT

13.1 Management of the Performance of Contracts

Officers should consider the appropriate frequency of contract management activity based upon the criticality, complexity and value of the contract. Contract Management activity should be undertaken in conjunction with key users of the goods, services or works. Effective records of reviews must be maintained.

- 13.2 Where performance of the contracted supplier falls below the required levels of service the Officer responsible for the contract shall ensure that the Contractor is made aware in a timely manner. Effective records shall be maintained of the actions agreed with the Contractor to correct the performance failures.
- 13.3 Where the performance of the Contractor continues to fall below the required level of service a formal meeting shall be undertaken with the Contractor and a notice of default served in accordance with the relevant process contained in the Conditions and Terms of the Contract.

13.4 Officers will work with Contractors on a partnership basis to deliver solutions to performance issues. A partnership approach is essential for longer term contracts where changes in the requirements of the Councils and the technology base will impact upon the performance required from the contract and the processes used to deliver the goods, services or works.

14. PREVENTION OF BRIBERY & CORRUPTION

14.1 Councillors and officers involved in the letting of contracts and the purchase of goods and services must ensure they comply with the relevant code of conduct and shall state at the earliest stage of the procurement procedure if they have any foreseeable conflicts of interest.

14.2 Any gift offered, either during a contract process or prior to or after the procedure must be reported in accordance with the Councils policy as set out in the Code of Conduct Policy for Councillors and Employees. If any person believes such a gift to have been offered as an inducement please contact the Corporate Manager Internal Audit or the Monitoring Officer immediately. Please report any suspicions of bribery through the Councils Whistleblowing Policy.